



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201505046

NOV 06 2014

Uniform Issue List: 402.03-00

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Legend:

Taxpayer A	=
Plan B	=
Company C	=
Account D	=
Account E	=
Financial Institution F	=
Bank G	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=

Dear:

This is in response to your request dated April 10, 2014 and supplemented by correspondence dated October 31, 2014 and November 3, 2014, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received a distribution on December 19, 2011 from Plan B totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover of Amount 4, the taxable portion of Amount 1, within the 60-day period prescribed by section 402(c)(3), was due to an error by Financial Institution F. Taxpayer A further represents that Amount 4 has not been used for any other purpose.

Taxpayer A represents that she completed a timely rollover of Amount 2 into an IRA account. In addition to the distribution of Amount 1, Taxpayer also received Amount 3, which was designated by Financial Institution F as nontaxable Roth contributions. Based on that information, Taxpayer A deposited Amount 3 into a non-IRA account where it remains. On December 12, 2013, Taxpayer A received a letter from Company C stating the 2011 Form 1099-R indicating Amount 3 as a nontaxable Roth contribution was incorrect. The letter informed Taxpayer A that the correct total of nontaxable Roth contributions was Amount 4.

Taxpayer A states that the error dates back to the December 2006 rollover of Plan D to Plan E which was subsequently transitioned into Plan B. Financial Institution F, which maintained both Plan D and Plan E, incorrectly recorded the portion of Taxpayer A's account attributable to after-tax contributions. To correct this error, in 2011, Bank G, as trustee of Plan B, issued a corrected Form 1099-R to Taxpayer A.

Based on the facts and representations, a ruling has been requested that the Internal Revenue Service waive the 60 day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount 4.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Code Section 402(c)(4) defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except the following distributions:

- A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --

- i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or
- ii) for a specified period of 10 years or more, and

B) any distribution to the extent the distribution is required under section 401(a)(9).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by her and reliance on the misinformation provided by Company C which resulted in Amount 4 being deposited into a non-IRA account.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 4, the taxable portion of Amount 1, from Plan B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 4 back into a rollover account. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 4 will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

201505046

If you wish to inquire about this ruling, please contact (Identification No.  
) at ( ). Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: